

Jean Dufort Baptichon
188 N Long Beach Avenue
Freeport, New York 11520
718-751-5488

FILED
IN CLERK'S OFFICE
US DISTRICT COURT E.D.N.Y.
★ JUL 28 2020 ★
BROOKLYN OFFICE

July 13, 2020

United States District Judge
Pamela K. Chen
225 Cadman Plaza East
Brooklyn, New York 11201

RE: 20-CV-2400 (PKC) (LB)
Memorandum and Order

Dear Judge Chen:

Today, I received your troubling Memorandum and Order erroneously dismissing my pro se action against the United States Department of Education on the alleged basis that by "letter of June 1, 2020 the Deputy Clerk of Court informed Plaintiff that his submission was deficient as he failed to pay the filing fee or submit an application for in forma pauperis ("IFP") relief;" that "plaintiff was provided with an IFP form and instructed that, in order to proceed, he was required to cure the deficiency within 14 days or his case may be dismissed. (Id). No such letter was sent to me; that "[T]o date Plaintiff has not returned the IFP form or responded in any way."

Judge, please, know that No such letter of June 1, 2020 was sent to me by the Deputy Clerk of Court and Plaintiff was not informed that his submission was deficient and Plaintiff did not fail to pay the filing fee or to submit his application for in forma pauperis ("IFP") relief. Plaintiff was not provide with an IFP form and was not instructed, in order to proceed, he was required to cure the deficiency within 14 days or his case may be dismissed because Plaintiff submitted his application for in forma pauperis together with his summons and complaint and application for permission for electronic case filing, (see copy of in forma pauperis application attached hereto as proof of filing), see also copies of application for the Court to request counsel that was also submitted with complaint. Lastly, (see 4 page- documents entitled "NOTICE," "NOTICE, Consent, And Reference Of A Civil Action To a Magistrate Judge," and "Obtaining Documents Filed in Your

Case by computer instead of Mail,” and Pro Se Registration and Consent for Electronic Service of Orders and Notices Issued by the Court in Civil Cases.”

Clearly, Judge the Court has made an error, which affects me materially. Hence Judge, I respectfully request that you reconsider the erroneous dismissal of my case that was properly filed in good faith. Thank you Judge.

Respectfully submitted


Jean Dufort Baptichon
Pro Se

**UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF NEW YORK**

Douglas C Palmer
Clerk of Court

Brenna B. Mahoney
Chief Deputy and Counsel to the Clerk

Carol McMahon
Chief Deputy



**Theodore Roosevelt Federal Courthouse
Emanuel Celler Federal Courthouse**
225 Cadman Plaza East
Brooklyn, NY 11201
(718) 613-2270

Alfonse D'Amato Federal Courthouse
100 Federal Plaza
Central Islip, NY 11722
(631) 712-6030

NOTICE

In accordance with Rule 73 of the Federal Rules of Civil Procedure and Local Rule 73.1, the parties are notified that *if* all parties consent a United States magistrate judge of this court is available to conduct all proceedings in this civil action (including a jury or nonjury trial) and to order the entry of a final judgment. You may consent to the magistrate judge who has been assigned to this case or to a new magistrate judge selected at random. Attached is a **blank** copy of the consent form that should be signed and filed electronically **only if** all parties wish to consent **and it is signed by all parties**. A consent form may also be accessed at the following link: <http://www.uscourts.gov/uscourts/FormsAndFees/Forms/AO085.pdf>

You may withhold your consent without adverse substantive consequences.

Do NOT return or file the consent unless all parties have signed the consent.

UNITED STATES DISTRICT COURT
for the
EASTERN DISTRICT OF NEW YORK

| | | |
|-----------|---|------------------|
| Plaintiff |) | |
| v. |) | Civil Action No. |
| Defendant |) | |

NOTICE, CONSENT, AND REFERENCE OF A CIVIL ACTION TO A MAGISTRATE JUDGE

Notice of a magistrate judge's availability. A United States magistrate judge of this court is available to conduct all proceedings in this civil action (including a jury or nonjury trial) and to order the entry of a final judgment. The judgment may then be appealed directly to the United States court of appeals like any other judgment of this court. A magistrate judge may exercise this authority only if all parties voluntarily consent. You may consent to the magistrate judge assigned to this case or to a new magistrate judge selected at random.

You may consent to have your case referred to a magistrate judge, or you may withhold your consent without adverse substantive consequences. The name of any party withholding consent will not be revealed to any judge who may otherwise be involved with your case.

Consent to a magistrate judge's authority. The following parties consent to have a United States magistrate judge conduct all proceedings in this case including trial, the entry of final judgment, and all post-trial proceedings.
Select one: The parties consent to the magistrate judge who is assigned to this case
 a new magistrate judge selected at random.

| <i>Parties' printed names</i> | <i>Signatures of parties or attorneys</i> | <i>Dates</i> |
|-------------------------------|---|--------------|
| | | |
| | | |
| | | |

In order for the Consent to be valid, all parties must sign this form and agree to the selection of the magistrate judge.
Reference Order

IT IS ORDERED: This case is referred to a United States magistrate judge to conduct all proceedings and order the entry of a final judgment in accordance with 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73.

Date: _____

District Judge's signature

Printed name and title

Note: Do not return the form to the Clerk of Court or file it on ECF unless all parties have consented to the exercise of jurisdiction by a United States Magistrate Judge. Do not return this form to a Judge.

Obtaining Documents Filed in Your Case by Computer Instead of Mail

Starting August 12, 2013, If you are not incarcerated and don't have an attorney, you may obtain court issued documents in your case(s) by computer instead of mail. You must have a

- valid e-mail address, and
- regular access to a computer.



It is strongly recommended that you establish a PACER account by visiting the PACER website at <https://www.pacer.gov>.

IF YOU ARE INTERESTED, YOU MUST DO THE FOLLOWING:

1. Complete the *Pro Se Registration and Consent for Electronic Service of Orders and Notices Issued by the Court in Civil Cases* form which is available for download at:
 - The Court's Website:
 - https://www.nyed.uscourts.gov/forms/all-forms/prose_forms
2. Complete the Registration form and return it to :

| | | |
|-------------------------|----|-------------------------|
| USDC-Pro Se Office | OR | USDC-Pro Se Office |
| 225 Cadman Plaza East | | 100 Federal Plaza |
| Brooklyn, New York 1120 | | Central Islip, NY 11722 |

NOTE: Obtaining documents from the computer instead of mail constitutes service as outlined in Federal Rules of Civil Procedure 5.

**BENEFITS
INCLUDE**
✦ No Postal
Delays
✦ Timely
Notification

For more information, please refer to the Court's web page <https://www.nyed.uscourts.gov>

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

**Instructions for Pro Se Registration and Consent for Electronic Service
of Orders and Notices Issued by the Court in Civil Cases**

It is now possible for you to receive electronic notification of court issued filings in your civil case(s).

What does electronic notification mean?

By registering for electronic notification you will be waiving your right to receive service of court issued documents such as notices, decisions, opinions, memoranda & orders, orders, judgments and appeal instructions in paper form by mail.

Instead, you will be sent notices of electronic filing via e-mail. In your email mailbox, the notice will be from "ecf_bounce" and the subject will be "Activity in Case [xx]-cv-[xxx]." Upon receipt of a notice, you will be permitted one "free look" at the document by clicking on the hyperlinked document number, at which time you should print or save the document to avoid future charges. The one 'free look' will expire in 15 days from the date the notice was sent. After the "free look" is used or expired, the document can be accessed by you through PACER (Public Access to Court Electronic Records) and you may be charged to view the document. It is strongly recommend that you establish a PACER account by visiting the PACER website at www.pacer.gov, so that you can view, print, and download documents at any time for a nominal fee.

Because you will be receiving court-issued documents only in electronic form, you must maintain a valid email address and regularly check your email.

Electronic service does not allow you to file documents electronically and does not mean that you can serve documents by e-mail to the opposing party. You must continue to file all communications regarding your case in paper copy with the Court and to serve the opposing party. Although you will receive electronic notices of what your adversary(s) files, your adversary must still serve you with a paper copy.

To be eligible you must:

- (1) not be incarcerated;
- (2) have a valid email address; and
- (3) have regular access to a computer.

It is highly recommended that you establish a PACER account.

Electronic notification is not available in social security or immigration cases.

If you are eligible and wish to receive electronic notification of court issued documents complete the Registration and Consent form for each case you want to receive electronic notifications and return the form(s) to the Court. The form is available on the Court's website:
www.nyed.uscourts.gov/forms/all-forms/prose_forms

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Pro Se Registration and Consent for Electronic Service of Orders and Notices
Issued by the Court in Civil Cases

Please register me to receive service of documents and notices of electronic filings to my e-mail address via the Court's electronic filing system (ECF). By registering for electronic service, I affirm that:

- I understand that I waive my right to receive service of court issued documents by first class mail and that I will no longer receive paper copies of court issued documents such as notices, decisions, opinions, memoranda & orders, orders, judgments and appeal instructions.
Initial here _____
- I understand that I will be sent notices of electronic filing via e-mail and upon receipt of a notice, I will be permitted one "free look" at the document by clicking on the hyperlinked document number, at which time I should print or save the document to avoid future charges. The one 'free look' will expire in 15 days from the date the notice was sent. After the "free look" is used or expired, the document can be accessed by me through PACER (Public Access to Court Electronic Records) and I may be charged to view the document.
Initial here _____
- I understand that it is strongly recommended that I establish a PACER account by visiting the PACER website at www.pacer.gov, which account will allow me to view, print, and download documents at any time for a nominal fee.
Initial here _____
- The email address I provided below is valid and I understand I am responsible for checking it on a regular basis. I will promptly notify the Court if there is any change in my personal data, such as name, address, or e-mail address.
Initial here _____
- I understand that electronic service does not allow me to file documents electronically and does not mean that I can serve documents by e-mail to the opposing party. I must continue to file all communications regarding my case in paper copy with the Court and serve the opposing party.
Initial here _____
- I understand that I must file a consent in each case in which I wish to receive electronic service and that electronic service is not available in Social Security or Immigration cases or for incarcerated litigants.
Initial here _____

Date: _____

Signature: _____

Case No: _____

Print Full Name: _____

Telephone No.: _____

Email Address: _____

Home Address: _____

Return form to:

U.S.D.C., E.D.N.Y. - Pro Se Dept.

225 Cadman Plaza East
Brooklyn, NY 11201

or
100 Federal Plaza
Central Islip, NY 11722

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
JEAN DUFORT BAPTICHON,

Plaintiff,

- against -

MEMORANDUM & ORDER
20-CV-2400 (PKC) (LB)

UNITED STATES DEPARTMENT OF
EDUCATION,

Defendant.

-----X

PAMELA K. CHEN, United States District Judge:

On May 26, 2020, Plaintiff filed the instant *pro se* action, asserting various tort claims under the Federal Tort Claims Act in relation to his student loan and Defendant's withholding of tax refunds that were due to him. (*See generally* Complaint, Dkt. 1.) By letter dated June 1, 2020, the Deputy Clerk of Court informed Plaintiff that his submission was deficient as he failed to pay the filing fee or submit an application for *in forma pauperis* ("IFP") relief. (See Dkt. 6.) Plaintiff was provided with an IFP form and instructed that, in order to proceed, he was required to cure the deficiency within 14 days or his case may be dismissed. (*Id.*)

To date, Plaintiff has not returned the IFP form or responded in any way. In light of the COVID-19 pandemic and Plaintiff's *pro se* status, the Court has allowed Plaintiff additional time to respond. However, more than 30 days have elapsed. Plaintiff is a frequent *pro se* litigant who is familiar with the filing requirements of federal district courts. *See, e.g., Baptichon v. Michigan*, No. 18-CV-2770 (PKC) (LB) (E.D.N.Y. May 16, 2018); *Baptichon v. United States*, No. 08-CV-2372 (NGG) (LB) (E.D.N.Y. June 20, 2008); *Baptichon v. Prevete*, No. 07-CV-358 (NGG) (LB) (E.D.N.Y. Nov. 15, 2007); *Baptichon v. Nevada State Bank*, 304 F. Supp. 2d 451, 453 (E.D.N.Y. 2004), *aff'd*, 125 F. App'x 374 (2d Cir. 2005). According to Public Access to Court Electronic

Records (“PACER”), the repository of federal appellate, district and bankruptcy case and docket information of which the Court takes judicial notice, Plaintiff has initiated ten additional actions in federal district courts. Moreover, the Court is confident that Plaintiff’s address listed is the correct address, because Plaintiff has used the same address to correspond with the Court since 2007. *See Baptichon v. Prevete*, No. 07-CV-358 (NGG) (LB) (E.D.N.Y. filed Jan. 25, 2007). Therefore, the Court declines to extend the time for Plaintiff to comply with the filing requirements.

Accordingly, the action is dismissed without prejudice for failure to pay the filing fee or provide a completed IFP application. The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith and therefore *in forma pauperis* status is denied for purpose of an appeal. *Coppedge v. United States*, 369 U.S. 438, 444–45 (1962). The Clerk of Court is respectfully directed to enter judgment and close this case.

SO ORDERED.

/s/ Pamela K. Chen

Pamela K. Chen

United States District Judge

Dated: July 8, 2020

Brooklyn, New York

U.S. District Court

Eastern District of New York

Notice of Electronic Filing

The following transaction was entered on 7/8/2020 at 2:33 PM EDT and filed on 7/8/2020

Case Name: Baptichon v. United States Department of Education

Case Number: 1:20-cv-02400-PKC-LB

Filer:

Document Number: 7

Docket Text:

ORDER: For the reasons stated in the attached Memorandum and Order, the action is dismissed without prejudice for failure to pay the filing fee or provide a completed *in forma pauperis* application. The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith and therefore *in forma pauperis* status is denied for purpose of an appeal. *Coppedge v. United States*, 369 U.S. 438, 444-45 (1962). The Clerk of Court is respectfully directed to enter judgment and close this case. Ordered by Judge Pamela K. Chen on 7/8/2020. (Shi, Yi Qing)

1:20-cv-02400-PKC-LB Notice has been electronically mailed to:

1:20-cv-02400-PKC-LB Notice will not be electronically mailed to:

Jean Dufort Baptichon
188 N. Long Beach Avenue
Freeport, NY 11520

rev. 7/08

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
Dufort J. Baptichon

Plaintiff,

-against-

The Department of Education, Any unnamed
Parties, et al. ■

Defendant(s).
-----X

**REQUEST TO PROCEED
IN FORMA PAUPERIS
IN SUPPORT OF THE
APPLICATION FOR THE COURT TO
REQUEST COUNSEL**

_____CV_____ ()

I, **Dufort J. Baptichon**

(print or type your name) am the plaintiff/defendant in the above-entitled case and I hereby request to proceed *in forma pauperis* and without being required to prepay fees or costs or give security. I state that because of my poverty I am unable to pay the costs of said proceeding or give security therefor, and that I believe I am entitled to redress.

1. If you are presently employed, give the name and address of your employer and state the amount of earnings per month.

**I am presently self-employed as an independent EUO cle
with the Law Office of Harley S. Fastman, Esq.**

2. If you are not presently employed, state the date you were last employed and your earnings per month at that time. **You must answer this question even if you are incarcerated.**

N/A

3. Have you received, within the past twelve months, any money from any source? If so, name the source and the amount of money you received.

No

a) Are you receiving any public benefits?

☒ No ☐ Yes, \$ _____

b) Do you receive any income from any other source?

☒ No ☐ Yes, \$ _____

4. Do you have any money, including money in a checking or savings account? If so, how much?
I have \$228..91 in my savings account and \$231.90 in my
5. Do you own any apartment, house or building, stocks, bonds, notes, automobiles or other valuable property? If the answer is yes, describe the property and state its approximate value.
☐ No ☒ Yes, \$ 272,000 approximately for my wife's one-family house in Freeport, New York and \$ approximately \$340,000 for her house under my name in Hempstead, New York, plus two automobiles valued approximately \$15,000. _____
6. Do you pay for rent or for a mortgage? If so, how much each month?
☒ No ☐ Yes, \$ 1,985.00 mortgage approximately paid by my wife.
7. List the person(s) that you pay money to support and the amount you pay each month.
N/A/
8. State any special circumstances which the Court should consider.
My personal income is below poverty level (see my 1099 for
the year 2019 annexed hereto). I am studying on my own
the New York State Bar exam.

I understand that the Court may dismiss this case if I give a false answer to any question in this declaration.

I understand that if the Court grants this application in a complaint against the Commissioner of Social Security, the pro bono attorney, if successful, has the statutory right to request that the Court award a fee of up to 25% of the accrued Social Security or Supplemental Security Income Benefits. See 42 U.S.C. § 406.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: May 15, 2020

Signature

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
Dufort J. Baptichon

Plaintiff,

**APPLICATION FOR THE COURT TO
REQUEST COUNSEL**

-against-

The Department of Education, Any
Unnamed Parties et al

Defendant(s).

_____CV_____ ()

-----X

1. Name of applicant Dufort J. Baptichon

2. Explain why you feel you need a lawyer in this case. (Use additional paper if necessary.)

I feel that I need a lawyer in this case because in this protracted
litigation a lawyer will represent and Protect my legal and
constitutional rights better than I can by myself, even if I was licensed.

3. Explain what steps you have taken to find an attorney and with what results. (Use additional paper if necessary.)

I have not taken any step to find an attorney because I can-
not afford to hire one at this time.

4. If you need a lawyer who speaks in a language other than English, state what language you speak:

N/A

5. I understand that if a lawyer volunteers to represent me and my lawyer learns that I can afford to pay for a lawyer, the lawyer may give this information to the Court. I understand that if the Court grants this application in a complaint against the Commissioner of Social Security, the pro bono attorney, if successful, has the statutory right to request that the Court award a fee of up to 25% of the accrued Social Security or Supplemental Security Income Benefits. See 42 U.S.C. § 406.

6. I understand that if my answers on my Request to Proceed *In Forma Pauperis* are false, my case may be dismissed.

7. **I declare under penalty of perjury that the forgoing is true and correct.**

Dated: May 15, 2020

Signature

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

Mr. Jean Dufort Baptichon,

Plaintiff(s),

vs.

The United States Department of Education,

Unnamed Parties, et.al

Defendant(s)

Case No.:

**MOTION FOR PERMISSION
FOR ELECTRONIC CASE
FILING**


Judge

As the (*Plaintiff Pro se*) Dufort J. Baptichon in the above-captioned matter, I respectfully ask the Court for permission to participate in electronic case filing ("e-filing") in this case. I hereby affirm that:

1. I have reviewed the requirements for e-filing and agree to abide by them.
2. I understand that once I register for e-filing, I will receive notices and documents only by email in this case and not by regular mail.
3. I have regular access to the technical requirements necessary to e-file successfully:

A computer with internet access; An email account on a daily basis to receive notifications from the Court and notices from the e-filing system. A scanner to convert documents that are only in paper format into electronic files; A printer or copier to create required paper copies such as chambers copies; A word-processing program to create documents; and A pdf reader and a pdf writer to convert word processing documents into pdf format, the only electronic format in which documents can be e-filed.

Dated: May 15, 2020


Dufort J. Baptichon/ Plaintiff Pro Se
188 N Long Beach Avenue
Freeport, New York 11520
718-751-5488

Jean Dufort Baptichon
188 N Long Beach Avenue
Freeport, New York 11520

7020 0090 0001 3877 5128

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT
OF THE RETURN ADDRESS. FOLD AT DOTTED LINE

CERTIFIED MAIL®



7020 0090 0001 3877 5128



1000



11201

U.S. POSTAGE PAID
FCM LETTER
FREEPORT, NY
11520
JUL 13, 20
AMOUNT

\$4.40

R2304M113769-10

United States District Judge
Pamela K. Chen
225 Cadman Plaza East
Brooklyn, New York 11201



11201-163299

